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8 *Class Counsel*

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 CARLOS COLLADO, et al.

12 v.

13 TOYOTA MOTOR SALES, U.S.A., INC.

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15  
16 ELLIOT FIXLER

17 v.

18 TOYOTA MOTOR SALES, U.S.A., INC.

Case Nos. 2:10-cv-3113-R-RC  
2:10-cv-03124-R-SS

**SUPPLEMENTAL DECLARATION  
OF ERIC H. GIBBS IN SUPPORT  
OF PLAINTIFFS' MOTION FOR  
FINAL APPROVAL AND  
ATTORNEY FEES**

Date: October 17, 2011

Time: 10:00 a.m.

Judge: Hon. Manuel L. Real

1 I, Eric H. Gibbs, hereby declare as follows:

2 1. I am a partner at Girard Gibbs LLP, one of the law firms who have  
3 represented Plaintiffs in this case. I have personal knowledge of the facts below and, if  
4 called upon to do so, could and would testify competently thereto.

5 2. I submit this declaration, along with Plaintiffs' supplemental filing of  
6 today's date, to address certain issues that came up at the August 29, 2011 fairness  
7 hearing. The Court elected to continue the hearing, but permitted the parties to submit  
8 additional materials regarding settlement claims data and the Ninth Circuit's recent  
9 *Bluetooth* opinion.

10 3. One element of *Bluetooth* is that the Court should guard against an  
11 unreasonable lodestar-based fee calculation by cross-checking that calculation using the  
12 percentage method. The Court expressed some concern at the hearing that the total of all  
13 counsel's fee requests exceed the value of the relief being provided to the class under the  
14 settlement.

15 4. As explained in the accompanying memorandum, the settlement, if  
16 approved, would provide between \$2.2 million and \$2.4 million in reimbursements for  
17 past repairs; about \$1.75 million in extended warranty repairs; and about \$400,000 for  
18 notice and claims administration. Should the Court decide to award a total of \$2 million  
19 in attorney fees, the fee award would comprise approximately 31% of the "constructive  
20 common fund," which is not significantly higher than the 25% benchmark used in true  
21 common fund cases.

22 5. Based on my experience in automotive consumer class actions like this one,  
23 I believe that a reasonable lodestar for the work done on behalf of the class in this case is  
24 between \$2 million and \$2.2 million.

25 6. My experience successfully litigating these types of cases is set forth in my  
26 June 6th declaration. (*See* Doc. 151, ¶¶ 39-43.) One recent example is *Browne v. Honda*,  
27 in which Judge Margaret M. Morrow calculated the reasonable lodestar at \$1.28 million  
28 for a case that alleged a defect in the braking systems used primarily in 2008-2009 Honda

1 Accords. *See* 09-CV-06750, Doc. 62 at 20 (C.D. Cal.) The settlement in that case was  
2 approved about 1 year after the case was first filed.

3 7. Another recent example is *Parkinson v. Hyundai Motor America*, where  
4 Judge Alicemarie H. Stotler calculated the reasonable lodestar at \$3.7 million for a case  
5 that alleged concealment of a defect that caused early and repeated failure of flywheel  
6 and clutch components used in the 2003 Tiburon. The settlement in that case was  
7 approved about 4 years after the case was first filed.

8 8. This case falls roughly in the middle between the *Honda* and *Hyundai* cases,  
9 both in duration of the case and the amount of litigation activity involved, and I believe  
10 that a reasonable lodestar calculation would fall somewhere in the middle as well.

11 9. One of the differences between this case and the *Honda* and *Hyundai* cases  
12 is that several more law firms claimed to have materially contributed to the litigation in  
13 this case. That does not mean this case justifies a greater overall lodestar as a result, but  
14 it does mean that it will require more attention from the Court to determine which of the  
15 firms' reported time was reasonable in light of the resulting benefits to the class, and  
16 which firms' reported time were not.

17 10. I have previously addressed some inaccuracies in the contributions described  
18 by other Plaintiffs' counsel in this case, particularly as to the Initiative Legal Group. (*See*  
19 Doc. 167, ¶¶ 8, 11-15.) At the August 29th hearing, the Court seemed to express that it  
20 was having difficulty resolving conflicting claims made by some of the Plaintiffs'  
21 counsel in their evidentiary submissions. If it would assist the Court, I would happy to  
22 support my testimony with *in camera* submissions so that the Court can better assess the  
23 respective firms' contributions to the pleadings and discovery actually used in this case,  
24 as well as to the successful resolution of Plaintiffs' claims, while preserving applicable  
25 work product protections.

26 11. In addition, to assist the Court in assessing the overall degree of success  
27 achieved in the litigation, which *Bluetooth* states is a an important factor in connection  
28 with both final approval and any fee requests submitted by counsel, I have attached as

1 Exhibit A a true and correct copy of the CLRA demand letter my firm and the  
2 Wasserman law firm served on Toyota at the onset of the litigation. From my perceptive,  
3 the proposed settlement achieves what we were seeking to accomplish by filing this  
4 action—namely, notice to the class of known issues with HID headlights on class  
5 vehicles; free repairs of the allegedly defective HID headlights; and restitution for past  
6 repairs—and is worthy of final approval.

7 I declare under penalty of perjury under the laws of the United States of America  
8 that the foregoing is true and correct. Executed on this 2nd day of September 2011, at  
9 San Francisco, California.

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11 /s/ Eric H. Gibbs  
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